

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI 96813

July 8, 2010

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: TERMINATION OF SPECIAL USE PERMIT ISSUED JULY 14, 2009
 TO MR. JACK R. HENDRICKSON OF MID-PACIFIC
 COMMUNICATIONS, INC., PERMITTEE, LIHUE-KOLOA FOREST
 RESERVE, KAWAIHAU DISTRICT, KAUAI, TAX MAP
 KEY: (4) 4-2-001: 011.

Background: In 2005, Mr. Jack Hendrickson of Mid-Pacific Communications, Inc. (MPC) first contacted the Department with a request for use of telecommunication facilities at Mt. Wekiu, TMK (4) 4-2-001: 011, located within Lihue-Koloa Forest Reserve on Kauai. On July 14, 2006, under Item C-3, the Board approved and issued a one-year Special Use Permit (SUP) to Mr. Hendrickson for the use of said facilities. Terms included a monthly rent of \$750 and an initial deposit of \$1500. This SUP was subsequently approved for annual renewal by the Board on June 22, 2007 (Item C-1), June 27, 2008 (Item C-1), and May 22, 2009 (Item C-1).

Over the course of these SUP renewals, MPC was a good tenant, cooperating with the Division and even cleaning up items left behind by previous occupants of the site. The Division, at MPC's request, began processing an opportunity for long-term disposition of the site; on July 11, 2008, under Item C-1, the Board approved as amended the sale of a 30-year lease at public auction for the subject site. The Division received Governor's concurrence for this lease sale on October 28, 2008 and has spent considerable time processing these documents.

Discussion: In early 2010, it was brought to the attention of the Division that MPC's last monthly rental payment of \$750 was received on August 6, 2009 (payment for the month of July, 2009). MPC is therefore in default of the terms of the current SUP (Exhibit A). Seven phone calls were made by Division staff at Kauai District to Mr. Hendrickson over the month of February, 2010 with no response. An email detailing payment problems sent to Mr. Hendrickson on March 01, 2009 finally elicited a response on the same date (Exhibit B). In his response, Mr. Hendrickson cited financial problems and indicated he would not be seeking renewal of his current SUP or pursuing a long-term lease of the site. On March 16, 2010, a default letter was executed by the DLNR Chairperson (Exhibit C).


As part of the conditions of the SUP, MPC is responsible for cleaning and restoring the area to its original condition or a condition satisfactory to the Department. MPC can remedy the default conditions by paying the Department past rent due and also by conducting appropriate cleanup work at the site prior to the Board's July 8, 2010 meeting. Presently, MPC is past-due on rental payments to DLNR totalling \$8,250 for the period of August 2009 through and including June 2010. Under current SUP terms, MPC rent for July 2010 is \$375.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Terminates, due to extended non-payment of monthly rental fees, the Special Use Permit issued to Mr. Jack Hendrickson of Mid Pacific Communications, Inc. dated July 14, 2009.
2. Finds that MPC is required to pay the Department the following amounts and/or is subject to any of the following actions pursuant to appropriate SUP terms and Hawaii Revised Statutes 183-5:
 - a. Any unpaid rent relating to this SUP beginning with the month of August, 2009.
 - b. If any clean-up is required upon final inspection of the premises by Division staff, the Board instructs DLNR staff to conduct appropriate and necessary cleanup or contract out such work, and charge MPC any amount owed against the MPC security deposit. Cleanup shall be limited to infrastructure, materials and equipment placed on the site by MPC since June, 2006.
 - c. If the security deposit is inadequate to cover unpaid rent and cleanup costs, then MPC shall be billed for the balance and, if unpaid, that amount will be sent to a collection agency.
3. Should the Board cancel the SUP to MPC due to default as a result of this action, the Board instructs staff to notify MPC, other State agencies and other appropriate entities that by law, MPC will not eligible to purchase, lease or otherwise receive any public lands for the next five years.

Respectfully Submitted,



Paul Conry
Administrator

Exhibits

APPROVED FOR SUBMITTAL:



for Laura H. Thielen, Chairperson

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELSEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**SPECIAL USE PERMIT
FOREST RESERVE SYSTEM**

DEPARTMENT OF LAND AND NATURAL RESOURCES
1151 PUNCHBOWL STREET, HONOLULU, HI 96813

EFFECTIVE: July 14, 2009

EXPIRATION: July 13, 2010

RESERVE: Portion of Lihue-Koloa Forest Reserve

TO: Mr. Jack R. Hendrickson
Mid Pacific Communications, Inc.
3022 Peleke St., Suite One
Lihue, HI 96766
Tel. (808) 246-9334
Cel. (808) 482-0639

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of May 22, 2009 (Item C-1), Mid Pacific Communications, Inc ("MPC"), is hereby granted a new Special Use Permit ("SUP") to utilize TMK (4) 4-2-001:011, and consisting of approximately 19,200 square feet in the area shown on the attached map labeled Exhibit "A" (the "Property"), for telecommunications purposes, subject to the following terms and conditions:

SPECIAL CONDITIONS

1. MPC will replace a corroded solar panel frame and an existing solar panel located on the Property with a new frame and twelve (12) 175 watt solar panels, and one (1) 35 pound, 900 watt generator.
2. MPC will place dish and yagi antennas on the rooftop and/or sidewall of the existing communications shed and use the existing 14' diameter geodesic dome for solar battery and solar equipment storage. The largest dish antenna will be 4' in diameter and the smallest will be 2' in diameter. The longest yagi antenna will be 4' long with a width of 2.25". Current plans call for four (4) dish antennae to be installed

3. All installed equipment will be painted dark green. MPC will install all radio, switching, and control equipment, as well as primary battery power, within the existing communications shed.
4. MPC will remove old, non-operational, or un-permitted antennae from the communications shed and contact any owners of existing equipment that appears to be in use to propose that the owner(s) of such equipment contact DOFAW to discuss co-location at the site.
5. MPC will use the existing helipad for site access.
6. MPC will transmit and receive high capacity Ethernet digital data and voice from Mt. Wekiu to locations on Kauai.

GENERAL CONDITIONS:

1. Entry shall be limited to daylight hours between 6:00 a.m. and 6:00 p.m.
2. The SUP shall be effective from July 14, 2009 to July 13, 2010. MPC may request cancellation of this permit any time after February 13, 2010 by providing a written request to the Department of Land and Natural Resources (DLNR) at least thirty (30) days in advance of the requested cancellation date. The Department shall not unreasonably deny such a request should MPC be in compliance with all permit terms.
3. Payment of \$ 750.00 rental fee per month, based on the appraisal done by the Land Division, dated March 24, 2006. Rental fees are payable in advance by the first day of each month.
4. MPC, shall procure at its own expense, and maintain during the entire period of this Special Use Permit, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount acceptable to the Department (\$1,000,000 per incident/\$2,000,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage; that said policy shall, cover the entire SUP area, including all improvements on or adjacent to the said SUP area in the control or use of MPC. MPC, shall furnish the Department with a Certificate showing the policy to be initially in force and shall furnish a like Certificate upon each renewal of the policy, each Certificate to contain or be accompanied by an assurance of the insurer to notify the Department of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve MPC, of its responsibility under this SUP as set forth herein or limit the amount of its liability under this Special Use Permit.
5. DLNR shall continue to hold a \$1,500.00 deposit made by MPC for restoration fees refundable upon completion or cancellation of the SUP and after a favorable site inspection by the Division of Forestry and Wildlife (DOFAW) on the basis that MPC is agreeable to condition No. 6 in this SUP as detailed below.

6. At all times herein, MPC, shall maintain and keep the right of entry area or premises in a neat, clean and sanitary condition. MPC, shall be responsible for cleaning and restoring the area to its original condition or a condition satisfactory to the Department of Land and Natural Resources upon completion or cancellation of the SUP. All trash and debris not pre-existing as of July 14, 2006 shall be removed from the area.
7. MPC, shall comply with all laws, rules and regulations of the Federal, State and County governments relative to the use of the subject area, including those relating to public health.
8. MPC, shall indemnify, defend and hold harmless the State of Hawaii, Department of Land and Natural Resources from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of MPC, under this approval or relating to or connected with the granting of this approval.
9. All equipment shall be placed on or within existing facilities within the designated area on the attached map labeled Exhibit "A".
10. This SUP does not grant the permittee exclusive access to the premises.
11. MPC, shall supply DOFAW a name and local telephone number of a contact person who can be reached at any time around the clock.
12. MPC, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. MPC, its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the SUP area any such materials except to use in the ordinary course of business, and only after written notice is given to the State of the identity of such materials and upon issuance of the State's consent, the same of which may be withheld at the State's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by MPC and its consultants, contractors and/or persons acting for or on its behalf, then MPC and its consultants, contractors and/or persons acting for or on its behalf, shall be responsible for the cost thereof. In addition, MPC and its consultants, contractors and/or persons acting for or on its behalf, shall execute affidavits, representations and the like from time to time at the State's request concerning the best knowledge and belief of MPC and its consultants, contractors and/or persons acting for or on its behalf, regarding the presence of hazardous materials on the SUP area placed or released by MPC and its consultants, contractors and/or persons acting for or on its behalf.
13. MPC, its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State harmless from any damages and claims resulting from the release of hazardous materials on the SUP area occurring while MPC, its consultants, contractors and/or persons acting for or on its behalf are in possession, or elsewhere if caused

by MPC, its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this Right-of-Entry Permit.

14. For purposes of this SUP, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, or oil as defined in the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.
15. MPC, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this SUP shall use appropriate precautions and measures to minimize inconveniences to the State, landowners, and the public in general.
16. MPC, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this SUP shall not store any personal belongings in the SUP area or premise during the effective period of this SUP.
17. All costs associated with the construction within the SUP area or premises shall be the sole responsibility of MPC and its consultants, contractors and/or persons acting for or on its behalf.
18. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, MPC, and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this SUP shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.
19. MPC and its consultants, contractors and/or persons acting for or on its behalf shall be responsible for obtaining all necessary federal, state or county clearances.
20. MPC and its consultants, contractors and/or persons acting for or on its behalf shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.
21. MPC and its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from MPC and its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the SUP area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the SUP area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at MPC and its consultants, contractors and/or persons acting for or on its behalf own cost and expense.

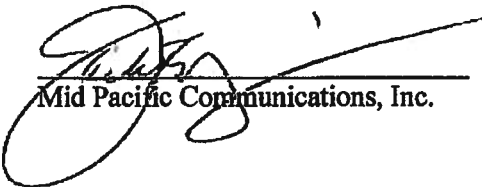
22. All disputes or questions arising under this SUP shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
23. This SUP is revocable and terminable at anytime for any reason in the sole and absolute discretion of the Chairperson of the Board of Land and Natural Resources. As long as the revocation or termination is not as a result of any fault of, or default by MPC, of any provision of this SUP, then MPC, may apply for a refund of any advanced rental payment made based upon the percentage of use denied by the revocation or termination.
24. This SUP or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
25. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this SUP is in force.
26. This permit only covers the use of the site as described above. Any other uses or alteration of the site is not allowable without applying for a new permit.
27. MPC is authorized to land a helicopter at the Mt. Wekiu helicopter pad for the purpose of carrying out telecommunication feasibility studies. MPC will contact Alvin Kyono, Branch Manager, Kauai DOFAW office by telephone at 808-274-3433 more than 24 hours before scheduled access attempts to the site by helicopter each time the site will be accessed. The names of the helicopter company, all persons planning to land at the Mt. Wekiu telecommunications site and the scheduled access date will also be provided. If scheduled access times are cancelled due to inclement weather or another factor, MPC will notify the Kauai DOFAW Branch Manager as soon as possible.
28. Disturbance of vegetation and wildlife will be avoided as much as possible.
29. Precautions will be taken, including consultation with DOFAW and the Kauai Invasive Species Committee, to prevent introduction of plants or animals not naturally present in the area. Should an infestation develop, SUP is responsible for eradication by methods to be specified by DOFAW.

Should you agree to the above terms and conditions, kindly sign in the space provided below and submit the following to the Branch Manager at the Kauai DOFAW Office (Division of Forestry and Wildlife, 3060 Eiwa Street, Lihue, Kauai 96766):

1. Copy of the signed acceptance below;
2. A current copy of proof of liability insurance as provided under General Condition No. 4 above.

3. Payment of the \$750.00 rental fee for the permit area. (Checks should be made payable to the "Department of Land and Natural Resources").

ACCEPTED:


Mid Pacific Communications, Inc.

By Its: CEO

Date: July 1st, 2009

cc: Land Board Member
OCCL
Mr. Alvin Kyono, DOFAW
Mr. Michael Constantinides, DOFAW



Galen K
Kawakami/DLNR/StateHIUS
03/02/2010 04:08 PM

To "Jack Hendrickson" <jrh@midpac.net>
cc Jacqueline.D.Robson@hawaii.gov,
Michael.Constantinides@hawaii.gov
bcc
Subject Re: Mt. Wekiu lease

Jack,

- Thank you for the information regarding the Wekiu site and the fact that the site is not operating at this time.
- I will be discussing this with Michael Constantinides, and Jacqueline Robson of our Administrative office regarding the a notice of default.
- Please feel free to contact us at any time to discuss this.

Mahalo,

Galen K. Kawakami
Division of Forestry & Wildlife
3060 Eiwa Street, Room 306
Lihue, HI 96766-1875
Phone: (808) 274-3439 Fax: (808) 274-3438
Email: Galen.K.Kawakami@hawaii.gov

"Jack Hendrickson" <jrh@midpac.net>

03/02/2010 06:25 AM

Please respond to
"Jack Hendrickson" <jrh@midpac.net>

To Galen.K.Kawakami@hawaii.gov
cc Jacqueline.D.Robson@hawaii.gov, Michael.Constantinides@hawaii.gov
Subject Re: Mt. Wekiu lease

Galen,

My apologies for the late responses - I've been out of the office since the 2-19 and unable to address these issues.

Mid Pacific is undergoing severe financial issues, including non payment and account cancellations by our customers that together with the destruction of the Wekiu site in December of 08 by hurricane force winds (see attached) has drained out cash and credit reserves - resulting in our inability to service some of our accounts payable as well as having to lay off several of our employees. Right now we are operating on a cut back staff all of whom have had to take severe pay cuts.

We are struggling to stay in business and intend to pay any past due accounts payable. However this may take some time and additional investor cash infusions and a revised business model. In the meantime all we can do is keep our creditors informed of our situation and confident in our intention to pay all past due accounts as soon as we are able.

Although we are aware of our obligation to pay lease payments for Wekiu until later this year, due to the wind damage to the roof of the shed we are not using the site at present. Once we have paid the past due amounts for this site we do not intend to renew the lease in 2010.

Sincerely,
Jack Hendrickson
Mid Pacific Communications Inc.

----- Original Message -----

From: Galen.K.Kawakami@hawaii.gov

To: jrh@midpac.net

Cc: Jacqueline.D.Robson@hawaii.gov ; Michael.Constantinides@hawaii.gov

Sent: Monday, March 01, 2010 6:05 PM

Subject: Mt. Wekiu lease

Jack,

- 7 telephone calls were made to you and your office dating back to Feb. 1, 2010 regarding this permit payment.
- The Kauai Division of Forestry and Wildlife will be issuing a notice of default on your signed Special Use Permit dated July 1, 2009.
- We have not received any payment from you since July 2009.

Please contact me at 274-3439 (office) or 639-3642 (cell) as soon as possible.

Galen K. Kawakami
Division of Forestry & Wildlife
3060 Eiwa Street, Room 306
Lihue, HI 96766-1875
Phone: (808) 274-3439 Fax: (808) 274-3438
Email: Galen.K.Kawakami@hawaii.gov [attachment "IMG_0425.jpg" deleted by Jacqueline D Robson/DLNR/StateHiUS]

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813
TEL (808) 587-0166 FAX (808) 587-0160

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

June 7, 2010

CERTIFIED MAIL

Mr. Jack Hendrickson
Mid Pacific Communications, Inc.
3022 Peleke St., Suite One
Lihue, Hawaii 96766

Subject: Default of Forest Reserve System Special Use Permit, TMK (4) 4-2-001:011

Dear Mr. Hendrickson,

I am writing to follow up on a phone conversation between our Forestry Program Manager Michael Constantinides and yourself earlier today. Mr. Constantinides spoke to you regarding the Forest Reserve System Special Use Permit ("SUP") issued by the Department of Land and Natural Resources ("Department") to Mid Pacific Communications, Inc ("MPC"), expiring July 13, 2010, for telecommunication purposes at Mount Wekiu within Lihue'e-Kōloa Forest Reserve, Kawaihau District, Kaua'i, Tax Map Key: (4) 4-2-001: 011. Your acknowledgment of receiving the Department's notice dated March 16, 2010, of default by MPC of SUP terms is appreciated. That notice provided MPC sixty (60) days to remedy the default conditions, but the Department did not receive any correspondence from MPC during the sixty (60) day period or thereafter.

The Division of Forestry and Wildlife ("DOFAW") is preparing paperwork recommending that at their July 8, 2010 meeting, the Board of Land and Natural Resources ("BLNR") declare MPC in default of the terms of the SUP and terminate the permit. Pursuant to BLNR action, and should MPC fail to become current on rental payments DOFAW will present the following recommendations to BLNR:

1. MPC is default of the terms of the SUP and Termination of the SUP.
2. Send unpaid rental amounts to a collection agency. As of June 7, 2010, our records show MPC is in arrears of \$8,250 for the period August 2009 through and including June 2010. Should MPC fail to pay the Department SUP rent due before the Board meeting, MPC would also be responsible for paying rent for the period of July 1, 2010 to July 8, 2010.

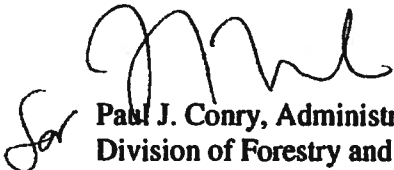
Mr. Jack Hendrickson
Mid Pacific Communications, Inc.
June 7, 2010
Page 2

3. MPC shall be expected to leave the SUP premises in a clean and orderly condition. If any clean-up is required upon final site inspection, the Department will conduct the appropriate cleanup or contract out such work, and charge MPC any amount owed against the MPC security deposit. If the security deposit is inadequate to cover these costs, then MPC shall be billed for the balance and, if unpaid, that amount will be sent to a collection agency.
4. Notify MPC and appropriate State agencies that pursuant to BLNR cancellation of the SUP due to default, by law, MPC will not eligible to purchase, lease or otherwise receive any public lands for the next five years.

I understand that you and Mr. Constantinides discussed present site conditions and the intent by MPC to pay overdue rent and to clean up the site before vacating it. Regarding site cleanup, we respectfully request that you provide short summaries of major improvements to pre-existing infrastructure that MPC has implemented at the site, as well as an inventory of major equipment (e.g. batteries, antennas, solar panels, transmission equipment, etc.) and new infrastructure (including basic method of construction) placed on the site by MPC since July, 2006.

We prefer to reach a mutually agreeable approach for MPC to meet the terms and conditions of the SUP and avoid the need for default proceedings, and would be open to discussions with your company. In that regard, your timely response to the above request is important. If you have questions please contact Mr. Constantinides at 808-587-4186.

Sincerely,


Paul J. Conry, Administrator
Division of Forestry and Wildlife

c: DOFAW Kauai Branch